THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 25196 OF 1997

Dated 24th January, 2007

Between:

P.Venkataramanaiah

… Petitioner

And

The Commissioner of Prohibition and Excise,
Andhra Pradesh, Hyderabad and others.

… Respondents.

ORAL ORDER:

In this writ petition, the petitioner who is the owner of lorry bearing No. AP 26-T-5659, has questioned the order of confiscation of the lorry vide orders dated 2.1.1997 passed in proceedings Rc.No. 30/96/A3 by the Deputy Commissioner of Prohibition & Excise (C.I.), Guntur as confirmed by the appellate authority i.e. Commissioner of Prohibition and Excise, A.P. Hyderabad by orders dated 27.8.1997 in CR. No. 928/97/DPE/B2.

Necessary facts, in brief, are as follows:

The vehicle in question was intercepted by the Station House Officer, Prohibition and Excise Station, Sullurpeta on 22.12.1995 at about 6 a.m. and was seized on the ground that the driver of the vehicle was carrying 7 full bottles of No.1 Mc.Dowell Brandy 750 ml, 10 pints of Mc.Dowell Brandy and 4 pints of Old Monk XXX Rum in a bag in tool box. The Prohibition and Excise Staff arrested the driver of the lorry and seized the property along with lorry bearing No. AP-26T-5659 under a cover of panchanama and mediators report. Subsequently, a case was registered in Pr. No.12595/26 of Prohibition and Excise Station, Sullurpeta under Section 8(b) of A.P. Prohibition Act, 1995. Thereafter, a show-cause notice was issued which was in a cyclostyled form stating that the said vehicle was used for transporting the contraband liquor and as to why the seized stock should not be confiscated under Section 13 of A.P. Prohibition Act. To the said show-cause notice, the petitioner herein had filed a detailed explanation stating that the vehicle bearing No. AP 26-T 5659 was being used for transportation of sand and one Chandraiah was employed as a driver of the vehicle.

The driver was instructed only to unload river sand at a place in Tamilnadu State and to return empty. The petitioner disowned the knowledge of carrying any liquor in the vehicle and stated that the said liquor was brought for the personal use of the driver and the vehicle cannot be confiscated. It is also stated in the explanation that the statement given by the driver before the Inspector of Prohibition & Excise reveals that there is no knowledge to the petitioner about the liquor bottles carried by the driver of the lorry.

Though a reference is made to the show cause notice and the explanation of the petitioner, by the primary authority in the impugned proceedings, but the confiscation is ordered by recording a finding that the report of the Prohibition and Excise Inspector, Sullurupeta reveals that the vehicle was used for carrying the liquor bottles illegally and hence the vehicle is liable for confiscation. The said order was appealed against as provided under Section 63 of the A.P. Excise Act, 1968 by raising number of grounds in detail and questioning the validity of the order passed by the primary authority. Even the appellate authority without re-appreciating the factual aspect of the matter and evidence on record, simply recorded a finding that the order of the Deputy Commissioner is on correct lines and further recorded a finding that the record disclosed transport of contraband with the knowledge of the appellant.

In this writ petition, it is submitted by Smt. P.Sarada, learned counsel appearing for the petitioner that the orders of confiscation as affirmed by the appellate authority are passed without reference to explanation and the detailed grounds raised in the appeal before the appellate authority. It is further submitted that in spite of detailed explanation, the same was not considered and only based on the report of the Inspector, which was prepared ex parte, the order of confiscation was passed. Further, it is stated that the petitioner belongs to a poor family and was originally a mechanic and the lorry

in question was purchased by borrowing an amount of Rs.2,80,000/- from TVS Sundaram Finance Corporation. The contraband was carried in the lorry of the petitioner by his driver without the knowledge of the petitioner and the finding of the appellate authority about the knowledge to the petitioner is without any basis and contrary to the findings recorded by the primary authority. It is also submitted that mere possession of the quantity of liquor in question by the driver of the vehicle without the knowledge of the owner in a tool-box cannot be a ground for confiscating the very vehicle itself. In support of her contention, learned counsel placed reliance on a decision of a Full Bench of this Court in Writ Petition No. 27180 of 1999 rendered on 11.7.2002.

On the other hand, it is submitted by the learned Government Pleader that as much as it is proved that the vehicle was used for transportation of the contraband liquor in violation of the provisions of Section 8(b) of the A.P. Prohibition Act, the order of confiscation was passed and the same is affirmed by the appellate authority and as such, there are no grounds for interference with the order of confiscation.

The order of confiscation was preceded by a show-cause notice, a copy of which is filed in the material papers. The show cause notice was issued calling for explanation as to why the seized stock, which includes lorry of the petitioner bearing No.AP 26-T-5659 should not be confiscated. To the said show cause notice, explanation was filed by the petitioner on 21.11.1996. Though the same was referred to in the reference 6th cited in the order passed by the Deputy Commissioner of Prohibition and Excise, but the explanation was not considered by the primary authority and it merely ordered confiscation based on a report of the Inspector of Prohibition and Excise. Once proceedings are initiated for confiscation by issuing show cause notice, the primary authority

is expected to pass orders of confiscation with reference to grounds of confiscation and the explanation offered thereto. After issuing show cause notice and on receipt of explanation, merely based on the report, which appears to be an ex parte one, no order of confiscation can be passed. Though there is specific plea of the petitioner in the explanation that he was not having any knowledge of transportation and the vehicle was being driven by one Chandraiah who was appointed as driver and no evidence is recorded attributing knowledge to the petitioner with regard to transportation of such a contraband, even the appellate authority without considering various grounds raised in the memorandum of grounds simply recorded a finding that the transport of contraband through the vehicle was made with the knowledge of the appellant. When such a finding was not recorded by the primary authority, it was not open for the first appellate authority to record a finding for the first time without issuing any notice. In any event, inasmuch as the remedy of appeal being a substantive one, the appellate authority ought to have considered the appeal with reference to the grounds raised in the appeal by re-appreciating the evidence on record in proper perspective. But, a perusal of the order passed by the appellate authority also did not indicate any valid reason for confiscation of lorry itself. It is also to be noted in this case that the contraband seized was only 21 bottles of all sizes together. Possession of this quantity of liquor by a driver in his cabin cannot be said that the vehicle itself was used for transporting such a quantity so as to confiscate the vehicle itself. As much as there are no valid reasons recorded either by the primary authority or by the appellate authority to confiscate the vehicle and further a Full Bench of this Court also held that in the absence of knowledge to the owner about the transportation of any contraband liquor, the vehicle cannot be confiscated, the orders of confiscation of the vehicle in

question are liable to be set aside.

For the above reasons, the impugned orders of confiscation dated 2.1.1997 passed by the Deputy Commissioner of Prohibition and Excise, Guntur, as confirmed by the appellate authority by orders dated 27.8.1997 are hereby quashed and the security furnished by the petitioner for release of the vehicle pursuant to the orders of this court dated 30.9.1997 stands discharged.

The writ petition is allowed. No order as to costs.

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24.1.2007 **R.SUBHASH REDDY, J.**

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